

Message

From: Dertke, Daniel (ENRD) [Daniel.Dertke@usdoj.gov]
Sent: 12/12/2014 6:59:40 PM
To: Anne Lynch [ALynch@hgnlaw.com]
CC: Smith, Rodney [rodney.smith@sol.doi.gov]; Marc Shapp [mshapp@hgnlaw.com]; Michael Goodstein [MGoodstein@hgnlaw.com]; Lyons, Ann [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=39ea390c390e41fd84511d6cdc266cee-ALYONS]; Anderson, Lea [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b8317edf62f74e67bcf42adbdf7785e9-LANDER03]
Subject: NGS petition, No. 14-73055 (9th Cir.)
Attachments: 14-73102 extension stipulation.pdf

Hi Anne – we need to respond to the mediator by Monday, on whether the case is amendable to settlement. I hope we can make consistent submissions, and I would like to report that the underlying dispute might be amenable to settlement, that the parties are in active talks towards that end, that the parties at present do not request the assistance of the mediator but might do so depending on how the current talks progress, and that the parties would like to amend the briefing schedule to allow our talks to continue.

Along those lines, I think your 12/22 opening brief deadline is still on the books. We can ask the mediator to take the 12/22 deadline off the calendar and establish 2/20/15 as your new deadline, and 4/21 for EPA. FYI, Janette just filed a joint motion for NPCA, to make the same changes, along with 5/5 for Intervenor and 5/18 for the reply. As you can see in the attached, the Navajo Nation and CAWCD take no position on those dates, SRP takes no position on the petitioner and respondent deadlines but reserves its position on the May dates, and I don't know what specifically the Gila River Indian Community's position is. If all parties in your case agree to these dates then the mediator should be able to take this action without a motion, but he may not be willing to do that if some of the Intervenor are reserving their position. So it might make sense to reach out to Intervenor about the briefing deadline.

Let me know how you'd like to proceed.

From: Dertke, Daniel (ENRD)
Sent: Saturday, November 15, 2014 10:03 AM
To: Anne Lynch
Cc: Smith, Rodney; Marc Shapp; Michael Goodstein; Ann Lyons; Lea Anderson
Subject: Re: NGS petitions, Nos. 14-73055, 14-73100, 14-73101, 14-73102 (9th Cir.)

Thanks Anne. Do you have a sense whether the other petitioners will agree to March for opening briefs, so that we can have one schedule?

On Nov 15, 2014, at 9:52 AM, Anne Lynch <ALynch@hgnlaw.com> wrote:

Dan:

Rod and I spoke yesterday afternoon to advance the progress being made by the Hopi Tribe and the United States on the parallel agreement. We also discussed the best briefing schedule for the parties to meet the twin goals of resolving the NGS petitions in a timely manner while also allowing appropriate time to give our negotiations the best chance of success (neither too short nor too long). I believe we agreed that the best timing would be for opening briefs to be due in March. This should give both sides enough time to finalize the draft agreement and seek all the proper approvals.

Rod, please correct me if I'm wrong about any of this or if you have more thoughts following our call yesterday.

Thanks,
Anne

Anne Lynch

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From: Janette Brimmer [<mailto:jbrimmer@earthjustice.org>]
Sent: Friday, November 14, 2014 6:37 PM
To: 'Dertke, Daniel (ENRD)'; Marc Shapp; Michael Goodstein; Anne Lynch; vinceyazzie@yahoo.com; Bartlett, Brad; barthlawoffice@gmail.com; Amanda Goodin; 'Neil Levine'
Cc: Lea Anderson; Lyons, Ann; Smith, Rodney
Subject: RE: NGS petitions, Nos. 14-73055, 14-73100, 14-73101, 14-73102 (9th Cir.)

Hello Daniel---sorry for the radio silence but a number of us have been sidetracked with deadlines. The NGO petitioners (NPCA et al. and TNA et al.) are agreeable to January 16 for petitioners briefs, the extended deadline for EPA's response and with the 28,000 words per side proposal. I know that Hopi will be responding separately so I don't want you to think I am speaking for them. We should probably try to finalize at least these pieces early next week so that we can get a stipulation to the court as the clock is ticking. Thanks.

Janette Brimmer
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From: Dertke, Daniel (ENRD) [<mailto:Daniel.Dertke@usdoj.gov>]
Sent: Monday, November 10, 2014 11:03 AM
To: MShapp@hgnlaw.com; MGoodstein@hgnlaw.com; ALynch@hgnlaw.com; vinceyazzie@yahoo.com; Bartlett, Brad; barthlawoffice@gmail.com; Janette Brimmer; Amanda Goodin

Cc: Lea Anderson; Lyons, Ann; Smith, Rodney

Subject: RE: NGS petitions, Nos. 14-73055, 14-73100, 14-73101, 14-73102 (9th Cir.)

Thanks everyone for talking earlier today. EPA will agree to 28,000 words combined for petitioners, and 28,000 words in response for EPA, if petitioners will agree to April 10 for EPA's response brief (assuming Petitioners' deadline is January 16).

Still to work out are the deadline, length, and number of Intervenor brief(s), and the deadline and length of Petitioners replies.

From: Dertke, Daniel (ENRD)

Sent: Monday, November 10, 2014 10:16 AM

To: MShapp@hgnlaw.com; MGoodstein@hgnlaw.com; ALynch@hgnlaw.com; vinceyazzie@yahoo.com; 'Bartlett, Brad'; barthlawoffice@gmail.com; jbrimmer@earthjustice.org; agoodin@earthjustice.org

Cc: Lea Anderson; Lyons, Ann; Smith, Rodney

Subject: RE: NGS petitions, Nos. 14-73055, 14-73100, 14-73101, 14-73102 (9th Cir.)

Ok, here is my proposal; perhaps petitioners and respondent can talk at 10 Pacific/1 Eastern today, and invite movant-intervenors to join us (or we could initiate a new call) at 10:30?

1. EPA will file the certified index by 11/14.
2. EPA is ok with 1/16/15 for petitioners opening briefs.
3. EPA is ok with two petitioners briefs but thinks that 28,000 words is excessive, and proposes 18,000 words, split between TNA/NPCA and the Hopi however they want to.
4. EPA cannot accept 14,000 words in response, and instead wants parity, i.e., 18,000 words for EPA.
5. EPA needs more than 30 days for our response, and instead wants 60 days, i.e., 3/17/15.
6. EPA believes Intervenor (assuming intervention is granted) have legitimate concerns about filing one brief of 14,000 words, but thinks they are better positioned to express their concerns and thus I suggested the joint call.
7. EPA proposes Intervenor filing deadline comes after EPA's, i.e., staggered briefing, but again thinks Intervenor are better positioned to discuss specific timeframes in a joint call.
8. Replies are typically half of opening briefs, so EPA proposes two reply briefs that together total 9,000 words, and that are filed 2 weeks after Intervenor's brief(s).

-Dan

From: Bartlett, Brad [mailto:bbartlett@law.du.edu]

Sent: Friday, November 07, 2014 3:38 PM

To: Dertke, Daniel (ENRD)

Cc: MShapp@hgnlaw.com; MGoodstein@hgnlaw.com; ALynch@hgnlaw.com; vinceyazzie@yahoo.com; barthlawoffice@gmail.com; jbrimmer@earthjustice.org; agoodin@earthjustice.org; Lea Anderson;

Lyons, Ann; Smith, Rodney

Subject: Re: NGS petitions, Nos. 14-73055, 14-73100, 14-73101, 14-73102 (9th Cir.)

Hello Dan,

Speaking only for TNA Appellants, we would prefer to hear from you first on whether the proposed briefing enlargements/schedule we provided to EPA by email last week is acceptable and **before** talking with movant-intervenors.

If EPA accepts Appellants' proposal, than yes, we would be comfortable with doing a call with movant-intervenors.

If there are items in Appellants' proposal EPA would like to modify or suggest changes too, TNA Appellants would prefer to address those first and on a separate call.

Note that I have removed counsel for movant-intervenor from this email list. Thanks for all of your work on this Dan.

Sincerely,

Brad A. Bartlett, Assistant Professor
University of Denver
Environmental Law Clinic
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Denver, CO 80208
Phone: (303) 871-7870
Email: bbartlett@law.du.edu

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On Nov 7, 2014, at 11:56 AM, Dertke, Daniel (ENRD) <Daniel.Dertke@usdoj.gov> wrote:

All: I am copying the four movant-intervenors on this email. I have spoken separately with petitioners and with movant-intervenors about a briefing format and schedule, and I think the best way to make progress is to have everyone on one call. The petitioners and I have a call scheduled for this Monday at 10 Pacific/1 Eastern. Would petitioners object to the movant-intervenors joining that call? If anyone feels strongly that there are matters that only the parties should discuss, then I would be ok with two calls back to back, with different conference lines, one with just petitioners and respondents, and one with petitioners, respondents, and movant-intervenors.

- Dan